



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** June 12, 2008

**TO:** Office of General Counsel (Brown)

**FROM:** Division of Regulatory Compliance and Consumer Assistance (Freeman, Vandiver)

**RE:** Docket No. 080007-EI, Progress Energy Florida, Inc.'s (the Utility's) Request for Confidential Classification of Portions of the Staff Audit Working Papers Prepared During the Progress Energy Florida, Inc., Environmental Cost Recovery Clause Audit for the Historical Year Ended December 31, 2007, Control No. 08-029-2-1, Documents 03988-08 and 04582-08

On May 8, 2008, when copies of certain of staff's audit working papers prepared during the "Progress Energy Florida, Inc., Environmental Cost Recovery Clause Audit for the Historical Year Ended December 31, 2007", were delivered to Progress Energy Florida at the audit exit conference, the Utility requested that these materials be temporarily exempted from public access in accordance with the provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On May 13, 2008, staff filed Document No. 03988-08 consisting of those specified portions of the staff audit working papers.

On May 29, 2008, Progress Energy Florida, Inc., filed a request pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, FAC, that portions of the sensitive working papers prepared by the staff receive confidential classification. The Utility's request includes redacted copies for public inspection (Document No. 04583-08) and highlighted copies (Document No. 04582-08).

Documents numbered 03988-08 and 04582-08 are currently held by the Office of the Commission Clerk as confidential pending resolution of Utility's request for a confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsection 366.093(3)(d), F.S., provides the following specific exemption.

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Subsection 366.093, F.S., provides; "Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:

....

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms...."

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

### **Staff Analysis of the Request**

Reading the Progress Energy Florida, Inc. filing reveals the sensitive material consists of:

Sensitive information concerning sulfur dioxide allowances as well as information concerning emission summaries and costs of allowances

Subsection 366.093(d), F. S., provides that the Commission may grant a confidential classification to sensitive contractual information to include bidding information if release of that information will impair the ability of the utility or its affiliates to contract on favorable terms.

The utility reports the sensitive information includes "...an invoice for sulfur dioxide allowance purchases. This invoice includes the quantity of allowances purchased, the unit cost per allowance, and the total amount paid for the allowances. In addition, the documents include several emission summaries which include monthly sulfur dioxide emissions, weighted average costs of sulfur dioxide allowances, and total monthly costs of sulfur dioxide allowances for various Progress units during the audit period in question. The disclosure of the information described above would place Progress at a competitive disadvantage when negotiating with sulfur dioxide allowance suppliers, who would know what the Company had recently agreed to pay for allowances. With this information, suppliers could tailor their prices to remain marginally competitive with prices recently paid by progress without offering their best price. As such, disclosure of the information would impair the company's efforts to contract for goods and services on favorable terms...."

Progress Energy Florida, Inc  
 Request for confidential Classification  
 June 12, 2008

Reading the filing reveals the sensitive information is contractual information where its release could reasonably impair the ability of the utility and its affiliates to contract for goods and services; therefore, we recommend that the Utility's request be granted.

**Information Held as Confidential**

To qualify as proprietary confidential business information the material must also be held as private and not be released to the public. The Utility asserts that this information has not been released the public, and the information is treated as confidential.

**Duration of the Confidential Classification Period**

The Utility requests that this material remain confidential for a period of "at least 18 months" and that the material be returned to the utility once the information is no longer needed for the Commission to conduct its business.

According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the Utility may request a further extension of the confidential classification before the classification period tolls.

**Staff Recommendation**

Based upon reading the filing, and for the reasons presented above, we recommend the Utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed recommendation follows:

**Detailed Recommendation**

Working Paper Number	Title	Lines	Recommend	Type of Material Classified as Confidential
Documents Numbered 03988-08 and 04582-08				
16-5/1-1	CEM's Emission Summary (Jan 07)	Col. A, 1-12, 19,21-22,30, 34-37;  Col. B, 1-2, 4-6,8-9,11-35	Grant	Sensitive Contractual Information

Working Paper Number	Title	Lines	Recommend	Type of Material Classified as Confidential
Documents Numbered 03988-08 and 04582-08				
16-5/1-2	CEM's Emission Summary (1/1/07 to 12/31/07)	Col. A-B, 1-6; Col. C, 1-5	Grant	Sensitive Contractual Information
16-5/1-3	CEM's Emission Summary (Feb 07)	Col. A, 1-22, 27-33,35, 37-38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-4	CEM's Emission Summary (Mar 07)	Col. A, 1-4, 6-14,19-22, 27,34,36-37; Col. B, 1-2, 4-6,8-9,11-35	Grant	Sensitive Contractual Information
16-5/1-5	CEM's Emission Summary (Apr 07)	Col. A, 1-8, 10-12,14-23, 27,34-37; Col. B, 1-2, 4-6,8-14, 16-35	Grant	Sensitive Contractual Information
16-5/1-6	CEM's Emission Summary (1/1/07 to 12/31/07)	Col. A-B, 1-6; Col. C, 1-5	Grant	Sensitive Contractual Information
16-5/1-7	CEM's Emission Summary (May 07)	Col. A, 1-9, 11,13-17,19, 21,23-24, 31-39; Col. B, 1-2, 4-6,8-32, 34-35	Grant	Sensitive Contractual Information
16-5/1-8	CEM's Emission Summary (Jun 07)	Col. A, 1-25, 30-38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-9	CEM's Emission Summary (Jul 07)	Col. A, 1-38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information

Working Paper Number	Title	Lines	Recommend	Type of Material Classified as Confidential
Documents Numbered 03988-08 and 04582-08				
16-5/1-10	CEM's Emission Summary (1/1/07 to 12/31/07)	Col. A-B, 1-6; Col. C, 1-5	Grant	Sensitive Contractual Information
16-5/1-11	CEM's Emission Summary (Aug 07)	Col. A, 1-38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-12	CEM's Emission Summary (Sep 07)	Col. A, 1-14, 18-27,30-38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-13	CEM's Emission Summary (Oct 07)	Col. A, 1-10, 12,16-39; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-14	CEM's Emission Summary (1/1/07 to 12/31/07)	Col. A-B, 1-6; Col. C, 1-5	Grant	Sensitive Contractual Information
16-5/1-15	CEM's Emission Summary (Nov 07)	Col. A, 1-12, 17-22,27, 32-33,38; Col. B, 1-2, 4-6,8-9,11-32, 34-36	Grant	Sensitive Contractual Information
16-5/1-16	CEM's Emission Summary (Dec 07)	Col. A, 1-4, 6-12,17-23, 38-39; Col. B, 1-2, 4-6,8-9,11-37	Grant	Sensitive Contractual Information
16-5/1-18	Invoice	Cols. A-B, 1	Grant	Sensitive Contractual Information

A temporary copy of this recommendation will be held for a short period at the following address  
I: 04582-08.2007 progress environmental raf.doc

CC: Division of Regulatory Compliance and Consumer Assistance (Rohrbacher)  
Division of Commission Clerk and Administrative Services (McClean)